

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 856**

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**Introduced by Assembly Member Caballero**

February 26, 2009

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~~An act to amend Section 14655 of the Food and Agricultural Code, relating to fertilizer. An act to amend Sections 14501, 14528, 14532, 14533, 14557, 14558, 14591, 14601, 14623, 14641, 14642, 14651, 14652, and 14655 of, and to add Sections 14550.5, 14651.5, and 14661 to, the Food and Agricultural Code, relating to fertilizer, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 856, as amended, Caballero. ~~Fertilizer.~~ *Fertilizing material: organic input material.*

*Existing law generally regulates fertilizing materials, as defined, and provides for the licensure of individuals who manufacture or distribute fertilizing materials.*

*This bill would include organic input material, as defined, within the definition of fertilizing material.*

*Existing law requires every person who manufactures or distributes fertilizing materials, before engaging in that activity, to obtain a license from the Secretary of Food and Agriculture for each plant and business location that he or she operates.*

*This bill would require the secretary, prior to issuing a license, to require verification that the applicant is a manufacturer or distributor of fertilizing material.*

*Existing law requires the registration of each differing label, other than weight or package size, for specialty fertilizer and certain other*

substances. Existing law requires the registration fee not to exceed \$200 per product.

This bill would also require registration of each differing label for organic input material and would require the registration fee for organic input material not to exceed \$500 per product. The bill would provide that registrations may not be issued without a current license.

Because a violation of provisions relating to fertilizing materials is a misdemeanor, by changing the definition of a crime this bill would impose a state-mandated local program.

Existing law requires a tonnage report to be submitted to the secretary semiannually, as provided, and requires the secretary to impose a penalty of \$200 on any person who fails to submit a report on or before the due dates.

This bill would provide that any tonnage report that is more than 90 days past due is a cause for revocation of the license.

Existing law provides that the secretary shall have free access at reasonable times to records, premises, or conveyances used in the manufacture, transportation, importation, distribution, storage, or application of any fertilizing material.

This bill would also provide that the secretary has access to production processes used for those purposes.

Existing law provides that the secretary shall, at the times and to the extent necessary for the enforcement of these provisions relating to fertilizing material, to, among other things, take samples of, or make analyses or examinations of, any substance.

This bill would also permit the secretary to monitor the manufacture of fertilizing material and take samples at different stages of the manufacturing process.

Existing law makes a violation of provisions relating to fertilizing materials a misdemeanor punishable by a fine of not more than \$500 for the first violation and not less than \$500 for each subsequent violation.

This bill would increase those fine amounts to not more than \$1,000 for the first violation and not less than \$1,000 for each subsequent violation.

This bill would authorize the Department of Food and Agriculture to levy a civil penalty against any person who violates the provisions relating to fertilizing materials, as provided.

*This bill would provide that the department shall be entitled to receive reimbursement for any reasonable attorney's fees and other related costs in enforcement of these provisions relating to fertilizing materials.*

*By authorizing a new source of revenue to be deposited into a continuously appropriated fund, the Department of Food and Agriculture Fund, this bill would make an appropriation.*

*Existing law provides that it is unlawful for any person to manufacture or distribute in this state any fertilizing material without complying with the provisions relating to fertilizing materials or its regulations.*

*This bill would provide that it is unlawful for any person to adulterate any solution or to alter any organic input material that is prohibited for organic production, and would make the violation of this provision a misdemeanor punishable by specified fines. By creating a new crime, this bill would impose a state-mandated local program.*

*Existing law provides that the movement, distribution, or sale of all or part of any product that has been quarantined by the secretary, unless the movement, distribution, or sale has the prior approval of the secretary, is a misdemeanor punishable by a fine of not more than \$500 and a fine of not less than \$1,000 for a 2nd or subsequent violation.*

*This bill would also make a violation of that provision subject to a civil penalty and would increase those misdemeanor fine amounts to not more than \$5,000 for the first violation and not less than \$10,000 for a 2nd or subsequent violation.*

*This bill would also make conforming and technical changes.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law generally regulates fertilizer materials and provides for the licensure of individuals who manufacture or distribute fertilizing materials.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 14501 of the Food and Agricultural Code*  
2     *is amended to read:*

3     14501. The Legislature finds and declares that it is the intent  
4     of this chapter to do all of the following:

5     (a) To promote the distribution of effective and safe fertilizing  
6     materials essential for the production of food and fiber.

7     (b) To provide assurance to the consumer of commercial  
8     fertilizers, agricultural minerals, packaged soil amendments,  
9     *organic input material*, and auxiliary soil and plant substances that  
10    the product purchased is properly identified, and to provide  
11    assurance of the validity of the quality and quantity represented  
12    by the manufacturer of these products.

13    (c) To provide funds for the administration and enforcement of  
14    this chapter.

15    *SEC. 2. Section 14528 of the Food and Agricultural Code is*  
16    *amended to read:*

17    14528. “Discontinued manufacturing” means an auxiliary soil  
18    and plant substance, packaged agricultural mineral, packaged soil  
19    amendment, *organic input material*, and specialty fertilizer that is  
20    no longer manufactured, but is still offered for sale.

21    *SEC. 3. Section 14532 of the Food and Agricultural Code is*  
22    *amended to read:*

23    14532. “Farm use” means that the *fertilizing* material is used  
24    primarily for application to crops produced for commercial value.

25    *SEC. 4. Section 14533 of the Food and Agricultural Code is*  
26    *amended to read:*

27    14533. “Fertilizing material” means any commercial fertilizer,  
28    agricultural mineral, auxiliary soil and plant substance, *organic*  
29    *input material*, or packaged soil amendment.

30    *SEC. 5. Section 14550.5 is added to the Food and Agricultural*  
31    *Code, to read:*

32    14550.5. “*Organic input material*” means any bulk or  
33    *packaged commercial fertilizer, agricultural mineral, auxiliary*  
34    *soil and plant substance, specialty fertilizer, or soil amendment*  
35    *to be used in organic crop and food production and complies with*  
36    *the requirements of the National Organic Program standards, as*  
37    *specified in Part 205 (commencing with Section 205.1) of*

1 *Subchapter M of Chapter I of Subtitle B of Title 7 of the Code of*  
2 *Federal Regulations.*

3 *SEC. 6. Section 14557 of the Food and Agricultural Code is*  
4 *amended to read:*

5 14557. “Provisional registration” means that under certain  
6 circumstances, a label for renewal on an auxiliary soil and plant  
7 substance, packaged agricultural mineral, packaged soil  
8 amendment, *organic input material*, or specialty fertilizer, alone  
9 or in any combination, may be registered for a limited period of  
10 time while labels are being corrected and reprinted.

11 *SEC. 7. Section 14558 of the Food and Agricultural Code is*  
12 *amended to read:*

13 14558. “Registrant” means any person who has registered a  
14 packaged agricultural mineral, auxiliary soil and plant substance,  
15 packaged soil amendment, *organic input material*, or specialty  
16 fertilizer.

17 *SEC. 8. Section 14591 of the Food and Agricultural Code is*  
18 *amended to read:*

19 14591. (a) Every person who manufactures or distributes  
20 fertilizing materials shall, before he or she engages in the activity,  
21 obtain a license from the secretary for each plant and business  
22 location ~~which~~ that he or she operates. *Prior to issuing a license,*  
23 *the secretary shall require verification that the applicant is a*  
24 *manufacturer or distributor of fertilizing material compliant with*  
25 *this chapter.* All licenses shall be renewed in January of each  
26 odd-numbered year, and shall be valid until December 31 of the  
27 following even-numbered year, if issued in January of that same  
28 year. However, a person who only distributes or who makes retail  
29 sales of packaged agricultural minerals, packaged commercial  
30 fertilizers, packaged soil amendments, *organic input material*, or  
31 packaged auxiliary soil and plant substances, alone or in any  
32 combination, which bear the registered label of another licensed  
33 person, is not required to obtain the license.

34 (b) Every person who manufactures or distributes, or intends  
35 to manufacture or distribute, ammonium nitrate as defined in  
36 Section 14512.5, in this state, shall inform the secretary of that  
37 activity or intent when applying for a license. The license obtained  
38 by that person shall identify him or her as a manufacturer or  
39 distributor of ammonium nitrate.

(c) The license fee shall not exceed two hundred dollars (\$200). The secretary may, based on the findings and recommendations of the board, reduce the license fee to a lower rate that provides sufficient revenue to carry out this chapter.

*SEC. 9. Section 14601 of the Food and Agricultural Code is amended to read:*

14601. Each differing label, other than weight or package size, such as changes in the guaranteed analysis, derivation statement, or anything that implies a different product, for specialty fertilizer, packaged agricultural mineral, auxiliary soil and plant substance, *organic input material*, and packaged soil amendment shall be registered. All registrations shall be renewed in January of an even-numbered year, and shall be valid until December 31 of the following odd-numbered year, if issued in January of that same year. The registration fee shall not exceed two hundred dollars (\$200) per product, *except for organic input material. The registration fee for organic input material shall not exceed five hundred dollars (\$500) per product. Registrations may not be issued without a current license.* The secretary may, based on the findings and recommendations of the board, reduce the registration fee to a lower rate that provides sufficient revenue to carry out this chapter. The secretary may require proof of labeling statements and other claims made for any specialty fertilizer, agricultural mineral, packaged soil amendment, *organic input material*, or auxiliary soil and plant substance, before the secretary registers any such product. As evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof in the evaluation of any fertilizing material. In all cases, experimental proof shall relate to conditions in California under which the product is intended for use.

The secretary, after hearing, may cancel the registration of, or refuse to register, any specialty fertilizer, packaged agricultural mineral, packaged soil amendment, *organic input material*, or auxiliary soil and plant substance, which the secretary determines is detrimental or injurious to plants, animals, public safety, or the environment when it is applied as directed, which is known to be of little or no value for the purpose for which it is intended, or for which any false or misleading claim is made or implied. The

1 secretary may cancel the registration of any product of any person  
2 who violates this chapter.

3 The proceedings to determine whether to cancel or refuse  
4 registration of any of those products shall be conducted pursuant  
5 to Chapter 5 (commencing with Section 11500) of Part 1 of  
6 Division 3 of Title 2 of the Government Code. ~~The director~~  
7 *secretary* shall have all the powers that are granted pursuant to  
8 Chapter 5.

9 *SEC. 10. Section 14623 of the Food and Agricultural Code is*  
10 *amended to read:*

11 14623. The tonnage report shall be submitted to the secretary  
12 semiannually not later than January 31 and July 31 of each year.  
13 The secretary shall impose a penalty in the amount of two hundred  
14 dollars (\$200) on any person who does not submit the report on  
15 or before those dates. *Any tonnage report that is more than 90*  
16 *days past due is a cause for revocation of the license.*

17 *SEC. 11. Section 14641 of the Food and Agricultural Code is*  
18 *amended to read:*

19 14641. The secretary shall have free access at reasonable times  
20 to all records, premises, *production processes*, or conveyances  
21 ~~which~~ *that* are used in the manufacture, transportation, importation,  
22 distribution, storage, or application of any fertilizing material.

23 *SEC. 12. Section 14642 of the Food and Agricultural Code is*  
24 *amended to read:*

25 14642. The secretary shall, at the times and to the extent  
26 necessary for the enforcement of this chapter, do all of the  
27 following:

- 28 (a) Take samples of any substance.  
29 (b) Make analyses or examinations of any substance.  
30 (c) Conduct investigations concerning the use, sale, adulteration,  
31 or misbranding of any substance.  
32 (d) *Monitor the manufacture of a fertilizing material and take*  
33 *samples at different stages of the manufacturing process.*

34 *SEC. 13. Section 14651 of the Food and Agricultural Code is*  
35 *amended to read:*

36 14651. (a) Unless otherwise specified in this chapter, any  
37 violation of this chapter, or the regulations adopted pursuant to  
38 this chapter, is a misdemeanor, punishable by a fine of not more  
39 ~~than five hundred dollars (\$500)~~ *one thousand dollars (\$1,000)*

1 for the first violation and not less than ~~five hundred dollars (\$500)~~  
2 *one thousand dollars (\$1,000)* for each subsequent violation.

3 (b) The secretary may, after hearing, refuse to issue or renew,  
4 or may suspend or revoke, a license or registration for any violation  
5 of this chapter or any regulation that is adopted pursuant to this  
6 chapter.

7 (c) Upon calling a hearing, ~~the director~~ *secretary* shall hand  
8 deliver or mail a notice of the hearing to the licensee or registrant  
9 specifying the time and place of the hearing at least 10 days prior  
10 to the hearing. The hearing officer may do any of the following:

11 (1) Administer oaths and take testimony.

12 (2) Issue subpoenas requiring the attendance of the licensee,  
13 registrant, or witnesses, together with books, records,  
14 memorandums, papers, and all other documents that may be  
15 pertinent to the case.

16 (3) Compel from the licensee or registrant and any witness the  
17 disclosure of all facts known to him or her regarding the case. In  
18 no instance shall any employee of ~~Agricultural Commodities and~~  
19 ~~Regulatory Services~~ *Feed, Fertilizer, Livestock Drugs and Egg*  
20 *Regulatory Services* serve as the hearing officer in any hearing  
21 conducted pursuant to this section.

22 (d) Any person who is denied a license, whose license is not  
23 renewed, or whose license is suspended or revoked pursuant to  
24 this section may appeal to the secretary.

25 *SEC. 14. Section 14651.5 is added to the Food and Agricultural*  
26 *Code, to read:*

27 *14651.5. (a) The department may levy a civil penalty against*  
28 *any person who violates this chapter in an amount of not more*  
29 *than five thousand dollars (\$5,000) for each violation. The amount*  
30 *of the penalty assessed for each violation shall be based upon the*  
31 *nature of the violation, the seriousness of the effect of the violation*  
32 *upon the effectuation of the purposes and provisions of this chapter,*  
33 *and the impact of the penalty on the violator, including the*  
34 *deterrent effect on future violations.*

35 *(b) For a first offense, and upon a finding that the violation is*  
36 *minor and negligent or unintentional, in lieu of a civil penalty, the*  
37 *secretary may issue a notice of warning.*

38 *(c) A person against whom a civil penalty is levied shall be*  
39 *afforded an opportunity for a hearing before the secretary, upon*  
40 *a request made within 30 days after the date of issuance of the*



1 *notice of penalty. At the hearing, the person shall be given the*  
2 *right to present evidence on his or her own behalf. If no hearing*  
3 *is requested, the civil penalty shall constitute a final and*  
4 *nonreviewable order.*

5 *(d) If a hearing is held, review of the decision of the secretary*  
6 *may be sought by the person against whom the civil penalty is*  
7 *levied within 30 days of the date of the final order of the secretary*  
8 *pursuant to Section 1094.5 of the Code of Civil Procedure.*

9 *(e) A civil penalty levied by the department pursuant to this*  
10 *section may be recovered in a civil action brought in the name of*  
11 *the state.*

12 *SEC. 15. Section 14652 of the Food and Agricultural Code is*  
13 *amended to read:*

14 14652. (a) It is unlawful for any person to manufacture or  
15 distribute in this state any fertilizing material without complying  
16 with this chapter or the regulations adopted pursuant to this chapter.

17 (b) *It is unlawful for any person to adulterate any solution or*  
18 *to alter any organic input material that is prohibited for organic*  
19 *production. Any violation of this subdivision is a misdemeanor*  
20 *punishable by a fine of not more than fifteen thousand dollars*  
21 *(\$15,000) for the first violation and not less than fifteen thousand*  
22 *dollars (\$15,000) for each subsequent violation.*

23 *SEC. 16. Section 14655 of the Food and Agricultural Code is*  
24 *amended to read:*

25 14655. (a) Any lot of fertilizing material for which a hold  
26 order or notice is issued shall be held by the person having control  
27 of the material and shall not be distributed or moved except under  
28 the specific directions of the secretary, pending final disposition  
29 pursuant to this chapter. This does not prevent the person who has  
30 control of the material from inspecting any seized material or from  
31 taking a reasonable sample for evidence while in the presence of  
32 a person designated by the ~~director~~ secretary.

33 (b) The movement, distribution, or sale of all or part of any  
34 product that has been quarantined by the secretary, unless the  
35 movement, distribution, or sale has the prior approval of the  
36 secretary, is a *violation subject to a civil penalty as specified in*  
37 *Section 14651.5, or a misdemeanor punishable by a fine of not*  
38 *more than five hundred dollars (\$500) thousand dollars (\$5,000).*  
39 A second or subsequent violation of this subdivision is a

1 misdemeanor punishable by a fine of not less than ~~one thousand~~  
2 ~~dollars (\$1,000)~~ *ten thousand dollars (\$10,000)*.

3 *SEC. 17. Section 14661 is added to the Food and Agricultural*  
4 *Code, to read:*

5 *14661. (a) The department shall be entitled to receive*  
6 *reimbursement for any reasonable attorney's fees and other related*  
7 *costs, including, but not limited to, investigative costs, involved in*  
8 *enforcement of this chapter.*

9 *(b) The department shall use all funds received pursuant to this*  
10 *chapter for the purposes of this chapter.*

11 *SEC. 18. No reimbursement is required by this act pursuant*  
12 *to Section 6 of Article XIII B of the California Constitution because*  
13 *the only costs that may be incurred by a local agency or school*  
14 *district will be incurred because this act creates a new crime or*  
15 *infraction, eliminates a crime or infraction, or changes the penalty*  
16 *for a crime or infraction, within the meaning of Section 17556 of*  
17 *the Government Code, or changes the definition of a crime within*  
18 *the meaning of Section 6 of Article XIII B of the California*  
19 *Constitution.*

20 ~~SECTION 1. Section 14655 of the Food and Agricultural Code~~  
21 ~~is amended to read:~~

22 ~~14655. (a) Any lot of fertilizing material for which a hold~~  
23 ~~order or notice is issued shall be held by the person having control~~  
24 ~~of the material and shall not be distributed or moved except under~~  
25 ~~the specific directions of the secretary, pending final disposition~~  
26 ~~pursuant to this chapter. This does not prevent the person who has~~  
27 ~~control of the material from inspecting any seized material or from~~  
28 ~~taking a reasonable sample for evidence while in the presence of~~  
29 ~~a person designated by the secretary.~~

30 ~~(b) The movement, distribution, or sale of all or part of any~~  
31 ~~product that has been quarantined by the secretary, unless the~~  
32 ~~movement, distribution, or sale has the prior approval of the~~  
33 ~~secretary, is a misdemeanor punishable by a fine of not more than~~  
34 ~~five hundred dollars (\$500). A second or subsequent violation of~~  
35 ~~this subdivision is a misdemeanor punishable by a fine of not less~~  
36 ~~than one thousand dollars (\$1,000).~~